IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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CIVIL WRIT PETITION NO. 12977 OF 2005.
DATE OF DECISION: SEPTEMBER 14, 2007.

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Nirbhey Singh son of Hardayal Singh, resident of Village Dungra, Tehsil Indri, District Karnal.

Petitioner.

Versus

1. Financial Commissioner, Haryana Civil Sectt, Chandigarh;

2. Commissioner, Rohtak Division, Rohtak; and

3. Gursharan Singh son of Sudarshan Singh, resident of Village Dungra, Tehsil Indri, District Karnal.

Respondent.

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CORAM; Hon'ble Mr. Justice K.S.Garewal; and
Hon'ble Mr. Justice R.S.Madan.

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Present: Shri S.N.Saini, Advocate, for the petitioner.

Shri R.S.Kundu, Addl: A.G.Haryana, for respondents No. 1 and 2.

Shri Vikram Singh, Advocate, for respondent No.3.

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R.S.Madan, J

The petitioner by invoking the extra ordinary writ jurisdiction under Article 226 of the Constitution of India, has sought the indulgence of this Court for quashing the orders dated 8.12.2004 and 26.04.2002 (Annexures P5 and P-3), passed by respondents No.1 and 2,respectively, whereby the appointment of the petitioner as Lambardar of Village Dungra, Tehsil Indri, District Karnal, was quashed and respondent No.3 was appointed as Lambardar. The petitioner has further sought for the restoration of the order dated 10.05.2000 passed by the learned Collector, Karnal, appointing him as Lambardar of the Village.

The facts necessary for deciding the writ petition are that pursuant to the proclamation made in Village Dungra through Halqa Patwari, the petitioner is said to have submitted application to the Naib Tehsildar for appointment as Lambardar of the Village. Three other candidates, namely, Kuldeep Singh, Gursharan Singh (respondent No.3 in this writ petition) and Balwant Singh also applied in response to the proclamation. After the receipt of applications, the Naib Tehsildar, Indri after due consideration recommended the name of the petitioner for appointment as Lambardar of Village Dungra, Tehsil Indri, District Karnal. The name of the petitioner for his appointment as Lambardar of the village was further recommended by the Assistant Collector, Ist Grade, Karnal, being more suitable and more educated.

When the case of the petitioner for appointment as Lambardar was pending before the Collector, respondent No.3 herein, made a complaint to the Collector alleging therein that the petitioner was un-authorizedly occupying the government land. The learned Collector, after verifying the facts about the un-authorized possession of the land, consider the merits and demerits of the complaint and found that the land is owned by Punjab Wakf Board. It was thereafter that the learned Collector vide order dated 10.5.2000 (Annexure P-1) appointed the petitioner as Lambardar of Village Dungra.

Feeling dis-satisfied with the order(Annexure P-1), respondent No.3 preferred an appeal before the learned Commissioner, Rohtak Division, Rohtak, which was accepted vide order dated 26.04.2002 and the appointment of petitioner as Lambardar was set aside holding that handing over possession of unauthorized land during the pendency of appeal, cannot remove the disqualification of the petitioner.

Aggrieved by the order, the petitioner went in appeal before the Financial Commissioner, Haryana, Chandigarh, who after hearing the

learned counsel for the parties, vide order dated 812.2004 up-held the appointment of respondent No.3 as Lambardar of the village, which is under challenge in the instant writ petition.

We have heard the learned counsel for the parties and have carefully scanned the documents produced on the record.

The learned counsel for the petitioner submitted that the learned Financial Commissioner has erred in law and facts in setting aside the orders passed by the District Collector, who in concurrence of the recommendations of Assistant Collector and Sub Divisional Magistrate, recommended the appointment of the petitioner as Lambardar of the village. He further submitted that the recommendations of the District Collector cannot be substituted by the Commissioner merely observing that the petitioner suffers disqualification for being in unauthorized possession of the land. In support of his submission, he placed reliance on ***Sarwan Kumar Versus The Financial Commissioner (Appeals-1), Punjab , 2002(2) R.C.R.(Civil) 520.*** On question of disqualification regarding un-authorized possession of the petitioner over the government land, it is submitted that the land in question upon which the un-authorized possession is alleged by respondent No.3, actually was Wakf property, the possession of which has since been handed over during the pendency of the appeal to the concerned department, cannot be taken as dis-qualification of the petitioner on the basis of which the appointment of the petitioner as Lambardar, has been set aside. In support of his submissions he placed reliance on a decision of the Supreme Court in ***Inderaj Versus Financial Commissioner and others- 1994 P.L.J. 473,*** wherein the Hon'ble Supreme Court observed as under:-

"Punjab Land Revenue Rules 15 and 19-B- Lambardar-Scheduled Castes Lambardar-Loan- Relevant date for comparison of qualifications is

the date of appointment and not the date for applications for the post of Lambardar. Debt cleared before the date of appointment but after the last date of applications. Loan no more a relevant factor to be taken into consideration".

To controvert the submission of the learned counsel for the petitioner, the learned counsel for respondent No.3 submitted that it is admitted by the petitioner himself that during the pendency of the case, that the possession of the land in question has been handed over to the concerned department, proved the fact that he was actually in unauthorized possession of the land belonging to the Wakf Board on the date of his appointment as Lambardar.

4.we have considered the above submissions of the counsel for the parties carefully. The only point to be decided is whether the petitioner suffers from a disqualification which would make him liable for dis-qualification from the post of Lambardar. It is pertinent to refer to the Rules, which are reproduced as under:-

Rule 16 of the ***Punjab*** Land ***Revenue*** ***Rules*** 1909 deals with "Dismissal of headmen", which reads as follows :-

"(i) A headman shall be dismissed when -

(a) he is sentenced to imprisonment for one year or upwards or to any heavier sentence; or

(b) in an estate owned altogether or chiefly of Government he ceases to possess the interest which led to his appointment;

(c) in any other estate he ceases to be a landowner in the estate or sub-division of the estate in respect of which he holds office;

(d) he has mortgaged his holding and has delivered possession to the mortgagee; but in special cases the Collector may with the Commissioner's sanction retain him in his office under such circumstances; if he can furnish adequate security for the payment of the ***revenue***

> he has to collect and for the due discharge of his duties; or
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> (e) his holding has been transferred under section 71 of the Land ***Revenue*** Act or the assessment thereof has been annulled under Section 73 of the Act. (ii) A headman *may* be dismissed when -
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> (a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office; or
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> (b) he is seriously embarrassed by debt, or if his unencumbered holding is so small as to disqualify him in the Collector's opinion for the responsibility attached to the office of headman; or
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> (c) owing to age or physical or mental incapacity, or absence from the estate, he is unable to discharge the duties of his office; or
>
> (d) There is reason to believe that he has taken part in, or concealed illicit distillation, or the smuggling of contraband articles such as narcotics, gold, jewellery, foreign exchange, (in Punjab only) cocaine, opium or charas;
>
> (e) he takes part in any unconstitutional agitation against the Government or failed to give his active support to the Government in the maintenance of law and order;
>
> (f) he neglects to discharge his duties or is otherwise shown to be incompetent;
>
> (g) the estate or sub-division thereof, in respect of which he holds office, or his own holding is attached either for an arrears of land ***revenue*** or by order of any court."

In sub- ***rule*** (i) of ***rule*** ***16*** , five clauses have been provided in which the circumstances have been prescribed under which a headman shall incur disqualification. In such cases, there is no scope for discretion and the person has to be necessarily declared disqualified if he is found to be covered by any of these clauses. On the other hand, in sub- ***rule*** (ii) of ***rule*** ***16*** a discretion has been conferred on the Collector to consider the desirability of dismissing a person if he suffers from any of the disabilities or dis-qualifications prescribed in the seven clauses of this sub- ***rule*** . This sub- ***rule*** provides that headman can be disqualified if any of the

circumstances mentioned in the clauses under this sub- ***rule*** come to occur. However, it is a matter left purely at the discretion of the Collector and he is to decide in the circumstances of each case whether to disqualify a Lambardar or to take some other action against him if he is found to be involved in such activities. Therefore, the arguments of the counsel for respondent that the petitioner herein suffers from a legal disqualification is not borne out by the provisions in this ***rule*** . Had the petitioner been suffering from any of the disqualification prescribed in sub- ***rule*** (i) of ***rule 16*** , his arguments would have some force. But in the case of dis-qualifications under sub- ***rule*** (ii) of ***rule 16*** , the matter being purely discretionary the Collector's choice of a candidate who has suffered from any of these infirmities a long time ago has to be respected. It is a well-settled law that the choice of the Collector is not to be interfered in a casual manner. The counsel for the respondent has referred to ***ruling*** cited as 1979 P.L.J. 578 which lays down that the Collector is the best judge and his choice upheld by the Commissioner should not be interfered with unless it is proved to be against ***rules*** .

It is a well established principle that a person to be appointed on the post of Lambardar should be enjoying good reputation and unblemished image besides having personal influence in the locality. At the same time, he should also be trust-worthy, dedicated, a person of good character and ability having sincerity to duty and who could maintain the dignity of the office of Lambardar. Nothing adverse has been brought on record about these parameters against the petitioner who has been selected by the Collector, Karnal, for the post of Lambardar. While selecting the candidate for the post of Lambardar, it is the Collector who has to weigh and judge the comparable qualifications of the rival candidates and it is he, who has to apply and make up his own mind on the basis of record and arguments placed before him and finally deciding about

the suitability of the candidate.

It has been ***emphasized*** that the ***petitioner Nirbhey Singh*** possesses higher merits and qualification than the respondent. The grievance of the respondent is that higher merits have not been given weightage by the courts below. It is worth-mentioning that the "Lambardari Rules" do not prescribe for any minimum educational qualifications for appointment of a Lambardar. Even illiterate persons can be appointed as Lambardar in the given circumstances of different cases. Moreover, the Collector while comparing the merits and qualifications of the rival candidates, found the petitioner as more suitable and acceptable and therefore, the choice of the Collector in selecting the petitioner for the post of Lambardar, has to be respected.

In the order dated May 10, 2000 passed by the Collector, Karnal, it is clearly mentioned that the petitioner is 40 years of age, has passed M.A. And owns 11 acres of land. It is further mentioned in the order that he motivated three cases of family planning and contributed Rs. 23,000/- in the Small Saving Scheme and carries Good Influence in the Village, whereas the rival candidate has passed 8th class.

Taking all these factors into consideration and as a sequel of our above discussion, the writ petition is allowed and the impugned orders (Annexures P-5 and P-3) are hereby quashed. Keeping in view the peculiar facts and circumstances of the case in hand, the order dated May 10, 2000, (Annexure P-1), passed by the Collector, Karnal, is restored with immediate effect, with no order as to costs.

(R.S.Madan)
Judge

(K.S.Garewal)
Judge

September 14, 2007.

Malik